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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,564	05/09/2005	Rangel Paulo Gerais De Camargo	713.1005	6525
20311 7590 05/28/2008 LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016				
EXAMINER ST CLAIR, ANDREW D				
ART UNIT		PAPER NUMBER		
3749				
MAIL DATE		DELIVERY MODE		
05/28/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/534,564

Applicant(s)CAMARGO, RANGEL PAULO
GERAIS DE**Examiner**

ANDREW ST CLAIR

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform to current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

With respect to amended claim 1, at least the following structural claim limitations either without antecedent basis or use interchanging or truncated terminology: "the modules" on lines 7 and 8, "the flap" on line 13, "the lower plate" on line 13, "the irradiation element" on line 15, "the cavity" on line 18, "the mirror" on line 20, "the equipment" on line 21, "the UV system" on line 21, "the modules" on line 24, "the modules" on line 28, "the surface burning" on line 30, "the tube" on line 33, and "the surface" on line 34. With respect particularly to "the flap" on line 13, it is unclear whether applicant refers to the previously recited "angular flaps," "side flaps," or "closing flaps." With respect to the lack of antecedent basis and/or interchangeable terminology throughout the claims, all structure should be clearly and consistently referred to and be supported by antecedent basis. If a structural element is introduced as "a elongated widget assembly," it should subsequently be referred to only as "the elongated widget assembly" or "said electronic widget assembly," never truncated to "the assembly," "said widget," etc. as this

creates uncertainty as to which recitations are new structure and which refer back to structure previously introduced. See MPEP 2173.05(e). The nature and extent of such problems in claim 1 renders the claim highly indefinite, precluding even a basic understanding of the structure which comprises applicants' apparatus.

Further with respect to claim 1, the preamble recites "Modular infrared irradiation apparatus *and its corresponding monitoring devices...*" and then goes on to recite that "the modular IR irradiation apparatus comprises...monitoring device for monitoring a thermal flow...collecting and monitoring device of smoke from...UV flame detection device..." In other words, the preamble distinguishes the modular infrared irradiation apparatus from corresponding monitoring devices, but the body of the claim recites monitoring devices as comprising the modular infrared irradiation apparatus. As such, it is unclear whether applicant claims a system comprising (1) a modular infrared irradiation apparatus, and (2) corresponding monitoring devices, or alternatively whether applicant claims a modular infrared irradiation apparatus comprising certain monitoring devices.

Further with respect to claim 1, the recitation of "collecting and monitoring device of smoke from the surface burning..." appears to be a method step improperly incorporated into an apparatus claim. The recitation cannot be interpreted as a functional claim limitation because no structure is interrelated that would perform the claimed step.

Further with respect to claim 1, the recitations of "arranged in a laminar portion" on line 10, "means for pressurized sealing air admission duct," on line 20, and "positioned to the cavity" on line 33 appear to be idiomatic, failing to clearly define claim limitations.

With respect to each dependent claim, the preamble "Apparatus, according to claim..." fails to comply with current US practice. The problem is further compounded by the fact that claim 1 is unclear as to whether an apparatus or a system is claimed, as discussed above. Each claim, including dependent claims, should form a complete and grammatically correct sentence; for instance: "The modular infrared irradiation apparatus of claim 1, further comprising..."

The dependent claims also fail to clarify the indefiniteness problems of claim 1, and are therefore also indefinite for at least the same reasons as claim 1.

This is not presented as an exhaustive listing of such problems. Applicant has the burden of submitting an application which is in the proper form for examination and should thoroughly check the claims for such problems, particularly antecedent basis and interchanging or truncated terminology.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Rattner (4,634,373).

As discussed above, the claims are considered to be highly indefinite; for the purposes of complete examination prior art is applied to the fullest extent possible. Rattner appears to disclose the claimed structure, as best it could be discerned. Rattner discloses a modular infrared

irradiation apparatus (see fig. 1) and corresponding monitoring devices, comprising mounting means 42, various flaps 22, 32, 36, 34, constructing means 52 for fixing the irradiation element to the apparatus, constructing means for combustible gas distribution 15, mechanical means 44 for pressurized sealing, a porous flexible refractory ceramic plate 30, a monitoring device (col. 6, ln. 51-52; "a UV scanning system"), and a function of collecting and monitoring and UV flame detection (col. 6, ln. 42-56).

Response to Arguments

5. In re claims 1-25, applicant's arguments have been fully considered and are responded to below.

With respect to applicant's arguments as to the rejection in the Non-final Office Action, these arguments are moot in view of the claim amendments and in view of the new grounds of rejection necessitated by amendment. With respect to applicants argument: "In order to maintain an anticipation rejection under 35 U.S.C. §102, the prior art must disclose each and every element of the rejected claims with sufficient clarity to prove its existence in the prior art," examiner generally agrees with this paraphrasing of the law. The claims as originally presented, and as currently amended, contain very few elements which are particularly pointed out and distinctly claimed. In order to claim an invention not disclosed in the prior art, the scope of the claims must be at least substantially discernable.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW ST CLAIR whose telephone number is (571)270-3513. The examiner can normally be reached on Monday - Friday, 8 a.m. - 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrew St.Clair/
Examiner, Art Unit 3749

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749